HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No. 13620 of 1992

Between:

Dr. P.Veerraju.

... Petitioner

And

Director of Collegiate Education,
Government of Andhra Pradesh,
Hyderabad and others.

... Respondents

Counsel for the Petitioner: Sri Y.Vivekananda for
Sri Y.Venkata Sastry

Counsel for the Respondents: Govt. Pleader for Higher
Education

August 29, 2006

:: ORDER::

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Whether a person appointed on part-time basis for a fixed period is entitled to be absorbed against a regular vacancy is the question which arises for determination in this petition filed by the petitioner under Article 226 of the Constitution of India for quashing communication dated 28-9-1992 issued by Director of Collegiate Education (respondent No.1) for appointment of respondent No.4 as Lecturer in Botany and for issue of a mandamus to the official and non-official respondents to regularize his services on the post of Lecturer.

The facts:

In furtherance of advertisement issued by President and Correspondent of V.S.M.College, Ramachandrapuram, East Godavari District (respondent No.2) in July 1992, the petitioner applied for appointment as a part-time Lecturer in Botany. He was selected by the Management of the College and was appointed as Lecturer in Botany vide order dated 24-7-1992. For the sake of convenience, the relevant extracts of the order of the petitioner's appointment are reproduced below:

> "Dr.P.Veerraju is hereby appointed as part-time lecturer in Botany, purely on temporary basis in the leave vacancy.
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> He is eligible to draw Rs.20/- (Rupees twenty only) per hour of teaching work not exceeding Rs.1440/- per month. He will be continued up to 31.3.1993 or till the closure of class work for the academic year 1992-93 or till the appointment of a regular lecturer whichever is earlier.

He is requested to report to duty on or before 1.8.1992 before the Principal with all the original certificates for verification. He is requested to submit his willingness or otherwise on or before 29.7.1992. If he fails to join duty on or before 1.8.1992 it will be presumed that he has no interest, and his appointment automatically stands cancelled. Any request for extension of time to join duty will not be considered."

After about two months of the petitioner's appointment as a part-time Lecturer, respondent No.1 vide his order dated 28-9-1992 ordained the transfer and posting of respondent No.4 – Sri Y.V.V.V. Ramana as Lecturer in Botany in the service of respondent No.2 because he was declared surplus from Maha Rani College, Peddapuram, East Godavari District. The President and Correspondent of respondent No.2 addressed letter dated 12-10-1992 to respondent No.1 for re-consideration of the transfer of respondent No.4 and for allowing the petitioner to continue as part-time Lecturer against the leave vacancy of Smt.S.Swarajya Lakshmi, but the latter did not agree to this. Therefore, with a view to avert possible termination of his services, the petitioner filed writ petition under Article 226 of the Constitution with the prayer that respondent No.2 may be directed to absorb him as Lecturer in Botany as per G.O.Ms.No.302, Education (CEI-2) Department, dated 23-8-1991 and G.O.Ms.Nos.12 and 13, Education (CE1-2) Department, dated 10-1-1992 and also quash order dated 28-9-1992 issued by respondent No.1 for transfer and posting of respondent No.4 in respondent No.2 college.

In the affidavit filed by him, the petitioner averred that for the purpose of joining as Lecturer against the leave vacancy of Smt. S.Swarajya Lakshmi, he had resigned the Research Associate

fellowship of Nagarjuna University and, therefore, he is entitled to be considered for absorption in terms of G.O.Ms.No.302, dated 23-8-1991. He also questioned the transfer and posting of respondent No.4 by claiming that the same had resulted in violation of his fundamental right to equality.

In the counter affidavit filed by Sri C.Rajagopala Rao, Joint Director working in the office of respondent No.1, it has been averred that order dated 28-9-1992 was passed in furtherance of policy decision taken by the government to assess the workload in all private aided colleges. According to him, respondent No.4 had been rendered surplus from Maharani College, Peddapuram and, therefore, he was absorbed in respondent No.2 college.

I have heard Sri Y.Vivekananda, learned counsel appearing for Sri Y.Venkata Sastry, Advocate for the petitioner and the learned Government Pleader for Higher Education and perused the record. In my opinion, this petition cannot but be treated as one of many frivolous and vexatious petitions filed under Article 226 of the Constitution of India which add to the already loaded dockets of the Court and result in substantial waste of time which can otherwise be used for deciding deserving cases.

As per his own showing, the petitioner was appointed as part-time Lecturer in Botany on a purely temporary basis against the leave vacancy of Smt. S.Swarajya Lakshmi. He was paid an hourly emolument at Rs.20/- with a ceiling limit of Rs.1440/- per month. His term would have ended latest by 31-3-1993. But, just after two months and twenty days of his appointment as part-time Lecturer, the petitioner filed writ petition and succeeded in persuading the learned Single Judge to pass an unusual interim

order dated 20-10-1992, which was continued by order dated 22-4-1994 and which has remained operative till this day, and on the basis of those orders, the petitioner has continued as part-time Lecturer for 14 years.

In my opinion, the petitioner's prayer for issue of a mandamus to the official respondents to facilitate his absorption as Lecturer in Botany in the employment of respondent No.2 is wholly misconceived and is liable to be rejected because, his part-time appointment for a fixed period of just over nine months did not create a right in his favour either to hold the post or to be continued in service. The terms and conditions incorporated in the order of his appointment are self speaking. The nature of his appointment, the mode of payment and tenure of appointment are clearly indicative of the fact that the petitioner was not selected for regular appointment against substantive vacancy. Therefore, he cannot claim appointment against the regular post by seeking a direction for absorption. The mere fact that by virtue of interim orders passed by this Court, he has continued as par-time Lecturer for 14 years also cannot enure to the petitioner's advantage because the post against which he was initially appointed had not been advertised for regular recruitment.

The petitioner's claim to be considered for absorption in terms of the policy contained in G.O.Ms.No.302, dated 23-8-1991 ought to have been rejected at the threshold because as on the date of institution of the petition, he had not completed even three months service, whereas as per the G.O., he should have completed 2 ½ years minimum service for the purpose of absorption in the service of respondent No.2. Not only this, the

very applicability of G.O.Ms.No.302, dated 23-8-1991 to the petitioner's case is highly doubtful. The policy contained in the G.O. is a sort of one time measure and the same cannot be made applicable to the employees who were appointed after 23-8-1991. Therefore, we do not find any valid ground or justification to entertain the petitioner's prayer for issue of a mandamus to absorb him in the services of respondent No.2.

Even otherwise, in view of the Constitution Bench judgment in **Secretary, State of Karnataka v. Uma Devi**[1], a part-time employee like the petitioner cannot seek any direction from the Court for absorption on the regular post. The same is the ratio of the earlier judgments in **Jammu and Kashmir Public Service Commission v. Narinder Mohan**[2] and **Chanchal Goyal (Dr.) v. State of Rajasthan**[3]. In **Uma Devi**'s case (supra), the Constitution Bench overruled a large number of judgments including **State of Haryana v. Piara Singh**[4] and laid down the following propositions:

> **"43.** Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the

appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a

magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (*sic*) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

By applying the ratio of the above mentioned judgment of the Constitution Bench to the facts of this case, I hold that the petitioner is not entitled to be absorbed in the service of respondent No.2.

Insofar as the petitioner's challenge to the absorption of

respondent No.4 is concerned, the same is liable to be disposed of as infructuous because, according to Sri Vivekananda, the said respondent has joined service elsewhere.

Before concluding, I deem it necessary to observe that an interim order like the one passed in favour of the petitioner who had not even completed three months service as part-time Lecturer on the date of filing of the writ petition, not only results in total compromise with the doctrine of equality, but also results in serious injury to larger public interest. The damage, which has been done by the interim order passed in favour of the petitioner pursuant to which he has continued as part-time Lecturer for a period of almost 14 years, cannot be repaired in any manner whatsoever. At least one meritorious person, who may have been selected for appointment against the regular vacancy in the cadre of Lecturer in Botany has been deprived of his legitimate right to be considered. Even the student community must have suffered all-through because a teacher like the petitioner who does not have any security of service and whose future is uncertain can hardly be expected to devote impart quality education. He will always be concerned about his future. If a meritorious person is appointed on regular basis, he can be expected to contribute a lot for the improvement of the education of the children, but the same can never be expected from a temporary or ad hoc teacher, not to say of a part-time employee.

In the result, the writ petition is dismissed. Interim order dated 20-10-1992 which was continued on 22-4-1994 shall stand automatically vacated. In order to redeem the situation, I direct respondent No.1 to take immediate steps to relieve the petitioner from his present assignment, because any delay in that regard

would result in perpetuation of the apparent illegality committed by his continuance in service for all these years on the strength of interim order passed by the Court.

G.S.SINGHVI, CJ

29th August, 2006.

GRR

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[1] 2006) 4 SCC 1

[2] (1994) 2 SCC 630

[3] (2003) 3 SCC 485

[4] (1992) 4 SCC 118